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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Stephen O'Bresley, et al.,

10 Plaintiffs,

11 v.

12 Farm Bureau Property & Casualty
13 Insurance Company, et al.,

14 Defendants.

No. CV-18-02553-PHX-DLR

ORDER

15
16 Plaintiffs Stephen and Carol O'Bresley initiated this action by filing a complaint in
17 Maricopa County Superior Court on June 25, 2018. (Doc. 1-3 at 2.) Defendant Farm
18 Bureau Property & Casualty Insurance Company subsequently removed the action to
19 federal court, asserting subject matter jurisdiction under 28 U.S.C. § 1332. (Doc. 1.)
20 Before the Court is Plaintiffs' motion to remand (Doc. 14), which is fully briefed (Docs.
21 15, 18).¹ For the reasons stated below, the motion is granted.²

22 **I. Background**

23 Plaintiffs are the insureds under a homeowners' insurance policy issued by
24 Defendant. (Doc. 1-3 at 2-3.) Plaintiffs allege that their home suffered fire- and smoke-

25 ¹ Also before the Court is Defendant's motion for leave to file a surreply (Doc.
26 20), which is denied because, in reaching its decision on the motion to remand, the Court
27 has not relied on any of the allegedly new arguments raised by Plaintiffs in their reply
28 memorandum.

² Defendant's request for oral argument is denied because the issues are
adequately briefed and oral argument will not help the Court resolve the motion. *See*
Fed. R. Civ. P. 78(b); LRCiv. 7.2(f).

1 related damage in June 2017. (*Id.* at 4.) They contend that the smoke damage and related
2 losses are covered under the homeowners’ insurance policy, but that Defendant
3 unreasonably handled their claim. (*Id.*) Plaintiffs assert claims against Defendant for
4 breach of contract and breach of the covenant of good faith and fair dealing. (*Id.* at 8-9.)
5 They also seek to compel an appraisal. (*Id.* at 9-10.) The amount in controversy is not
6 apparent from the face of the complaint, but Plaintiffs seek general and special damages,
7 including compensatory damages, damages for funds still owing under the homeowners’
8 insurance policy, damages for mental and emotional distress, punitive damages, as well
9 as attorneys’ fees and costs. (*Id.* at 11.)

10 Along with the complaint, Plaintiffs filed a Certificate Regarding Compulsory
11 Arbitration (Doc. 1-4) and an Offer of Judgment letter (Doc. 1-7). The Certificate
12 Regarding Compulsory Arbitration certified that Plaintiffs’ claims are not subject to
13 compulsory arbitration under Arizona law because the amount in controversy exceeds
14 \$50,000. (Doc. 1-4.) The Offer of Judgment requested \$74,000 “inclusive of all
15 damages, all taxable court costs, all interest, and all attorneys’ fees.” (Doc. 1-7 at 2-3.)

16 Plaintiffs served the summons, complaint, Certificate Regarding Compulsory
17 Arbitration, and Offer of Judgment letter via service on Defendant’s designated statutory
18 agent, the Arizona Department of Insurance (“ADOI”), on July 10, 2018. (Doc. 14 at 2.)
19 On July 13, 2018, Defendant received the documents. (Doc. 1 at 2.) On August 10,
20 2018, Defendant removed the matter to this Court. (Doc. 1.)

21 **II. Legal Standard**

22 Any civil action brought in state court over which the federal district courts have
23 original jurisdiction may be removed by the defendants to the federal district court for the
24 district where the action is pending. 28 U.S.C. § 1441(a). A notice of removal must “be
25 filed within 30 days after the receipt by the defendant, through service or otherwise, of a
26 copy of the initial pleading” 28 U.S.C. § 1446(b). Although the statutory time limit
27 for removal petitions is procedural, not jurisdictional, the time limit nonetheless is
28 mandatory and a timely objection to a late notice of removal will defeat removal. *See*

1 *Smith v. Mylan Inc.*, 761 F.3d 1042, 1045 (9th Cir. 2014).

2 When removal is based on diversity jurisdiction, complete diversity among parties
3 must exist and the matter in controversy must exceed \$75,000. 28 U.S.C. § 1332(a). If
4 the complaint does not demand a specific dollar amount, the defendant “must prove, by a
5 preponderance of the evidence, that the amount in controversy meets the jurisdictional
6 threshold.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir.
7 2003). Doing so requires more than “conclusory allegations,” *Singer v. State Farm Mut.*
8 *Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); a removing defendant must offer
9 evidence that it is “more likely than not” that the amount in controversy exceeds \$75,000,
10 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). A case will be
11 remanded “if there is any doubt as to the right of removal in the first instance.” *Gaus v.*
12 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

13 **III. Discussion**

14 It is undisputed that Plaintiffs are citizens of Arizona and Defendant is an Iowa
15 corporation with its principal place of business in West Des Moines, Iowa. (Doc. 1 at 3.)
16 Plaintiffs argue, however, that Defendant untimely noticed its removal and, alternatively,
17 that the amount in controversy does not exceed \$75,000. (Doc. 14.)

18 **A. Timeliness of Removal**

19 Pursuant to A.R.S. § 20-221(B), Plaintiffs were required to serve Defendant
20 through the ADOI. The parties dispute whether the 30-day clock for removal began to
21 run when Plaintiffs served process on the ADOI, or when the ADOI forwarded the
22 pleadings to Defendant three days later. (Doc. 14 at 3; Doc. 15 at 2.)

23 Under § 1446(b), the 30-day removal period begins to run “after the receipt by the
24 defendant . . . of a copy of the initial pleading.” 28 U.S.C. § 1446(b). In enacting this
25 provision, Congress intended to safeguard defendants from not having “access to the
26 complaint before commencement of the removal period.” *See Befort v. Farm Bureau*
27 *Prop. & Cas. Ins. Co.*, No. CV-18-02564-PHX-RM, 2018 WL 5792339, at *2 (D. Ariz.
28 Nov. 5, 2018) (quoting *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,

1 351-52 (1999)). Consistent with this purpose and with other district court decisions
2 within the Ninth Circuit, the Court concludes that the removal period begins to run from
3 the date a defendant actually receives the complaint, not merely from the date of service
4 upon a statutory agent. *See Befort*, 2018 WL 5792339, at *2; *see also Torres v.*
5 *Transguard Ins. Co. of Am., Inc.*, No. CV-13-01578-PHX-ROS, 2013 WL 12112576, at
6 *2 (D. Ariz. Oct. 8, 2013).

7 Here, Plaintiffs served process on the ADOI on July 10, 2018. Defendant,
8 however, did not receive the pleadings from the ADOI until July 13, 2018. The removal
9 period was not triggered until that later date, rendering Defendant's notice of removal
10 timely.

11 **B. Amount in Controversy**

12 To prove that the amount in controversy exceeds \$75,000, Defendant relies on five
13 pieces of evidence. (Doc. 15 at 7-11.) First, Plaintiffs served on Defendant a \$74,000
14 Offer of Judgment, which Defendant did not accept. (*Id.* at 12.) Second, Plaintiffs
15 certified that the claim is not subject to compulsory arbitration because the amount in
16 controversy exceeded \$50,000. (*Id.* at 6.) Third, Plaintiffs, through a Sworn Statement in
17 Proof of Loss, have claimed \$49,287.92 in insurance benefits. (*Id.*) Fourth, Defendant
18 posits that punitive damages could "easily exceed the \$75,000 threshold." (*Id.* at 8-9.)
19 Finally, Plaintiffs have requested attorneys' fees, which Defendant claims will likely
20 increase the amount in controversy above \$75,000. (*Id.* at 9.) Having considered this
21 evidence, the Court is not persuaded that the amount in controversy exceeds the
22 jurisdictional threshold.

23 First, a "certificate regarding compulsory arbitration does nothing more than
24 establish that the amount in controversy is likely more than \$50,000." *See Ferguson v.*
25 *First Am. Specialty Ins. Co.*, No. CV 09-01581-PHX-JAT, 2009 WL 4154653, at *3 (D.
26 Ariz. Nov. 23, 2009). The certificate does not show that the amount in controversy
27 exceeds \$75,000. *See Welsh v. N. H. Ins. Co.*, 843 F. Supp. 2d 1006, 1009 (D. Ariz.
28 2012).

1 Next, an offer of judgment is “relevant evidence of the amount in controversy if it
2 appears to reflect a reasonable estimate of the plaintiff’s claim.” *Cohn v. Petsmart, Inc.*,
3 281 F.3d 837, 840 (9th Cir. 2002). Here, Plaintiffs’ Offer of Judgment demonstrates that,
4 at the time of removal, they were willing to settle their case for \$74,000. More
5 importantly, Defendant rejected Plaintiffs’ offer, implying Defendant believed it could
6 resolve the case for less than \$74,000. Accordingly, the Offer of Judgment reasonably
7 reflects that the parties value Plaintiffs’ claim at less than the jurisdictional threshold
8 amount. *See Befort*, 2018 WL 5792339, at *3 (considering defendant’s failure to accept
9 \$74,000 offer of judgment in remanding case to state court); *Brown v. Bankers Life &*
10 *Cas. Co.*, No. CV-09-1459-PHX-GMS, 2009 WL 2914215, at *4 (D. Ariz. Sept. 8, 2009)
11 (considering defendant’s rejection of \$70,000 offer of judgment in holding amount in
12 controversy requirement not satisfied).

13 Lastly, Defendant’s arguments concerning the value of Plaintiffs’ “other
14 compensatory damages,” punitive damages, and attorneys’ fees are too speculative to
15 support removal. *See, e.g., Ferguson*, 2009 WL 4154653, at *3 (finding that \$63,954.96
16 estimate of property damage, even in light of other damages, was insufficient to establish
17 jurisdictional requirement). Although these other categories of damages may be
18 considered when determining the amount in controversy, Defendant presents no evidence
19 that these other damages more likely than not will increase the amount in controversy
20 above \$75,000.

21 **IV. Conclusion**

22 Defendant has not met its burden to show that the amount in controversy exceeds
23 the jurisdictional requirement of \$75,000. The evidence suggests that the amount in
24 controversy exceeds \$50,000, but is not greater than \$74,000. Accordingly,

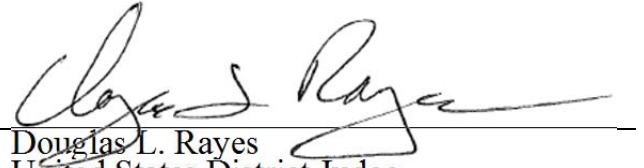
25 **IT IS ORDERED** that Plaintiffs’ motion to remand (Doc. 14) is **GRANTED**.
26 Upon remand, the Clerk of the Court is directed to terminate this case.

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1 **IT IS FURTHER ORDERED** that Defendant's motion for leave to file a surreply
2 (Doc. 20) is **DENIED**.

3 Dated this 20th day of November, 2018.

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9 Douglas L. Rayes
10 United States District Judge
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